UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/AC.86/XXXIX/PV.5
9 April 1991

ENGLISH

COMMITTEE ON APPLICATIONS FOR REVIEW OF ADMINISTRATIVE TRIBUNAL JUDGEMENTS

VERBATIM RECORD OF THE 5th MEETING

Held at Headquarters, New York,
on Thursday, 9 April 1992, at 3 p.m.

Chairman: Mr. AFONSO (Mozambique)

This record is subject to correction.

Corrections should be submitted in one of the working languages, preferably in the same language as the text to which they refer. They should be set forth in a memorandum and also, if possible, incorporated in a copy of the record. They should be sent, within one week of the date of this document, to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of this meeting and of other meetings will be issued in a corrigendum.

92-60497 8555V (E)

The meeting was called to order at 3.15 p.m.

The CHAIRMAN: The present public meeting has been convened pursuant to paragraph 4 of Article VIII of the rules of procedure of the Committee on Applications for Review of Administrative Tribunal Judgements, document A/AC.86/2/Rev.4.

That paragraph provides as follows:

"The decisions of the Committee and the text of any questions to be addressed to the International Court of Justice, as well as the results of and the participants in any votes taken during the private deliberations, shall be formally announced in a public meeting, at which any member of the Committee may make a statement for the record."

(The Chairman)

At the current session the Committee considered applications for review of the following Administrative Tribunal Judgements:

(a) Application of Mr. Hallin for a review of Administrative Tribunal Judgement No. 531;

(b) Application of Mr. Salinas for a review of Administrative Tribunal Judgement No. 530;

(c) Application of Mr. Bentaleb for a review of Administrative Tribunal Judgement No. 539;

(d) Application of Mr. Araim for a review of Administrative Tribunal Judgement No. 533;

(e) Application of Mr. Al-Atraqchi for a review of Administrative Tribunal Judgement No. 538;

(f) Application of Mr. Ibarria for a review of Administrative Tribunal Judgement No. 541; and

(g) Application of Ms. Fallah for a review of Administrative Tribunal Judgement No. 545;

We shall now proceed with our work by reviewing each of these applications. First, we shall take up the application of Mr. Hallin.

The Committee on Applications for Review of Administrative Tribunal Judgements considered the application of Mr. Hallin submitted with regard to Judgement No. 531, rendered by the United Nations Administrative Tribunal in the case of Hallin against the United Nations Joint Staff Pension Board, at its closed meeting held on 1 April 1992.

In light of article 48, paragraph (c) of the Regulations of the United Nations Joint Staff Pension Fund, during the discussion of the application of Mr. Hallin, questions were raised as to whether the Committee had competence

(The Chairman)

to consider the application of Mr. Hallin, since it relates to the Judgement rendered by the United Nations Administrative Tribunal in a case of the alleged non-observance of the aforementioned Regulations. Without taking a vote on this matter, the Committee proceeded to consider whether or not there was a substantial basis for the application of Mr. Hallin in respect of the ground set forth in Article 11 of the Statute of the United Nations Administrative Tribunal and referred to in the application. This ground is as follows:

"Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?"

The decision of the Committee with regard to this question was taken by vote.

In response to the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by a vote of 18 to 1, with 5 abstentions, that there was not a substantial basis for the application on that ground.

In view of the Committee's negative response to the question which had been put to it in the application of Mr. Hallin, the Committee decided that there was not a substantial basis for the application under Article 11 of the Statute of the Administrative Tribunal and that, therefore, the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 531 delivered by the United Nations Administrative Tribunal in the case of Hallin against the United Nations Joint Staff Pension Board.

(The Chairman)

Does any member of the Committee wish to make a statement for the record on this case?

Since that is not the case, we shall now proceed to the application of Mr. Salinas.

The Committee on Applications for Review of Administrative Tribunal Judgements considered the application of Mr. Salinas submitted with regard to Judgement No. 530 rendered by the United Nations Administrative Tribunal in the case of Salinas against The Secretary-General of the United Nations, at its closed meeting held on 1 April 1992.

After members of the Committee had presented their views on the application of Mr. Salinas, they were invited to decide whether or not there was a substantial basis for the application in respect of the following three grounds set forth in Article 11 of the Statute of the United Nations Administrative Tribunal and referred to in the application:

1. Has the Tribunal exceeded its jurisdiction or competence?
2. Has the Tribunal failed to exercise jurisdiction vested in it?
3. Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

The decisions of the Committee with regard to these three questions were taken by vote.

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had exceeded its jurisdiction or competence, the Committee decided, by a vote of 21 to none, with 3 abstentions, that there was not a substantial basis for the application on that ground.

(The Chairman)

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided by a vote of 21 to none, with 3 abstentions, that there was not a substantial basis for the application on that ground.

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by a vote of 20 to none, with 4 abstentions, that there was not a substantial basis for the application on that ground.

(The Chairman)

In view of the Committee's negative response to the questions which had been put to it in the application of Mr. Salinas, the Committee decided that there was not a substantial basis for the application under Article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 530 delivered by the United Nations Administrative Tribunal in the case of Salinas against the Secretary-General of the United Nations.

Does any member of the Committee wish to make a statement for the record?

Since that is not the case, we shall now consider the application of Mr. Bentaleb.

On 1 and 2 April 1992 the Committee on Applications for Review of Administrative Tribunal Judgements considered at three closed meetings the application of Mr. Bentaleb submitted with regard to Judgement No. 539 rendered by the United Nations Administrative Tribunal in the case of Bentaleb against the Secretary-General of the United Nations.

After members of the Committee had presented their views on the application of Mr. Bentaleb, they were invited to decide whether or not there was a substantial basis for the application in respect of the following three grounds set forth in Article 11 of the Statute of the United Nations Administrative Tribunal and referred to in the application:

1. Has the Tribunal failed to exercise jurisdiction vested in it?
2. Has the Tribunal erred on a question of law relating to the provisions of the Charter of the United Nations?
3. Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

(The Chairman)

At the request of a member of the Committee, the decisions of the Committee with regard to these three questions were taken by a roll-call vote.

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided by a vote of 12 to 3, with 6 abstentions, that there was not a substantial basis for the application on that ground. The voting was as follows:

In favour: Botswana, Tunisia, United Republic of Tanzania

Against: Australia, France, Ireland, Italy, Mozambique, Myanmar, Poland, Qatar, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America

Abstaining: China, Ecuador, Malaysia, Oman, Thailand, United Arab Emirates

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had erred on a question of law relating to the provisions of the Charter of the United Nations, the Committee decided by a vote of 13 to none, with 8 abstentions, that there was not a substantial basis for the application on that ground. The voting was as follows:

Against: Australia, France, Ireland, Italy, Mozambique, Myanmar, Poland, Qatar, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America

Abstaining: Botswana, China, Ecuador, Malaysia, Oman, Thailand, Tunisia, United Arab Emirates

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by 13 to none, with 8 abstentions, that there was not a substantial basis for the application on that ground. The voting was as follows:

(The Chairman)

Against: Australia, France, Ireland, Italy, Mozambique, Myanmar, Poland, Qatar, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America

Abstaining: Botswana, China, Ecuador, Malaysia, Oman, Thailand, Tunisia, United Arab Emirates

In view of the Committee's negative response to the questions which had been put to it in the application of Mr. Bentaleb, the Committee decided that there was not a substantial basis for the application under Article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 531 delivered by the United Nations Administrative Tribunal in the case of Bentaleb against the Secretary-General of the United Nations.

Does any member of the Committee wish to make a statement for the record?

Mr. AL-SAMEEN (Oman) (interpretation from Arabic): I have a statement to do with Mr. Bentaleb's case and with Mr. Araim's. Should I wait until we take up the case of Mr. Araim, Mr. Chairman, or may I make it now?

The CHAIRMAN: Since you wish to speak on the two cases, it would be better if you waited until we concluded consideration of Mr. Araim's case. I would strongly advise that course, but if you wish to make the statement now I do not think any member of the Committee would object.

Mr. AL-SAMEEN (Oman) (interpretation from Arabic): I think that what you suggest is the correct procedure, Mr. Chairman, and I shall abide by it.

The CHAIRMAN: Thank you very much.

We shall now consider the application of Mr. Araim.

On 1 and 1 April 1992 the Committee on Applications for Review of Administrative Tribunal Judgements considered at two closed meetings the application of Mr. Araim submitted with regard to Judgement No. 533 rendered by the United Nations Administrative Tribunal in the case of Araim against the Secretary-General of the United Nations.

(The Chairman)

After members of the Committee had presented their views on the application of Mr. Araim, they were invited to decide whether or not there was a substantial basis for the application in respect of the following two grounds, set forth in article 11 of the Statute of the United Nations Administrative Tribunal and referred to in the application:

1. Has the Tribunal failed to exercise jurisdiction vested in it?

2. Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

At the request of a member of the Committee the decisions of the Committee with regard to those two questions were taken by roll-call votes.

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided by a vote of 10 to 8, with 2 abstentions, that there was not a substantial basis for the application on that ground. The voting was as follows:

In favour: Botswana, Malaysia, Mozambique, Myanmar, Thailand, Tunisia, United Arab Emirates, United Republic of Tanzania

Against: Australia, China, France, Italy, Poland, Qatar, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America

Abstaining: Ecuador, Oman

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by a vote of 17 to none, with 3 abstentions, that there was not a substantial basis for the application on that ground. The voting was as follows:

(The Chairman)

In favour: None

Against: Australia, Botswana, China, France, Italy, Mozambique, Myanmar, Oman, Poland, Qatar, Russian Federation, Tunisia, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America

Abstaining: Ecuador, Malaysia, Thailand

In view of the Committee's negative response to the questions which had been put to it in the application of Mr. Araim, the Committee decided that there was not a substantial basis for the application under article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 533, delivered by the United Nations Administrative Tribunal in the case of Araim against the Secretary-General of the United Nations.

I now call on members of the Committee who wish to make statements for the record.

Mr. AL-SAMEEN (Oman) (interpretation from Arabic): My delegation studied the cases of Mr. Araim and Mr. Bentaleb and the relevant documents. Also, we listened to the statements made by various delegations, which in general were in favour of the arguments set forth in those two cases. The Joint Appeals Board had unanimously accepted those arguments. The Judgement rendered by the Administrative Tribunal had also gone in the same direction.

On that basis, my delegation has no doubt whatsoever that the grounds set forth in the two cases are correct and that justice should be done in regard to them.

(Mr. Al-Kameen, Oman)

Through you, Mr. Chairman, I would appeal to the Organization to correct the error committed in regard to these two cases. We should try to avoid a repetition of such errors, so that the prestige of the Organization and its procedures may be preserved. Indeed, we should set an example for other bodies.

The Secretary of the Committee referred to promises made by the Administration with regard to correcting the status of the two persons concerned. Because of that, and out of respect for the decisions of the Administrative Tribunal in this regard and the mechanisms adhered to, my delegation abstained in the voting.

Hence, I request the Administration of the United Nations to speed up the implementation of the Judgments of the Administrative Tribunal on these two cases and to adopt the practical procedures required for such implementation.

The CHAIRMAN: The statement just made by the representative of Oman will be included in the verbatim record.

Mr. FALL (Guinea) (interpretation from French): I should like to inform the Committee that, because of pressing obligations, I was unable to be present during the voting on the requests made by Mr. Araim and Mr. Bentaleb for review of the Judgments of the Administrative Tribunal. On the basis of the statements I made at the beginning of our work, I take this opportunity to state that my delegation would have cost a vote in favour of the Committee's giving consideration to their requests for an advisory opinion by the International Court of Justice. I have already explained the reasons for that position.

My delegation believes that, thereby, the Administration's repeated misuse of authority in regard to officials should cease. In any case, having in mind the serious implications of the two requests, my delegation hopes that

(Mr. Fall, Guinea)

the Administration will carefully study these cases of injustice with a view to reaching the appropriate final and equitable solution.

I felt that I should make this statement in order to make my delegation's position clear. I would ask that it be included in the verbatim record.

The CHAIRMAN: The statement by the representative of Guinea will appear in the verbatim record.

Mr. KAMTHAR (Saudi Arabia) (interpretation from Arabic): First, I should like to state that my delegation was not present when the Committee voted on the cases of Mr. Araim and Mr. Bentaleb, but had we been here, we would have voted in favour.

Also, I should like to support what was just said by the representative of Oman with regard to giving careful attention to the cases of Mr. Araim and Mr. Bentaleb. I appeal to the Administration of the United Nations to take into consideration what has been said here.

The CHAIRMAN: I thank the representative of Saudi Arabia for his statement, which will be duly reflected in the record.

Mr. AL-SUWAIDI (United Arab Emirates) (interpretation from Arabic): We have all discussed the cases presented to us, and despite the shortage of time and the limited mandate given to the Committee, we have done our best to fulfil our duty within the framework of that mandate.

We have also discussed the status of the Committee and many of us touched on its terms of reference. It has been said that those whose cases are under discussion have the impression that a great deal can be changed in the Committee with regard to these cases. The most unfortunate aspect of this is that we are here to review the Judgements of the Administrative Tribunal - we have to review them in the literal sense of the word.

It has also been said that the work of the Committee should be reviewed as well; that either we should be effective or bring the work of the Committee to an end in the future and confine ourselves to the Judgements of the Administrative Tribunal. It is a source of deep concern for me to say that. Unfortunately, it is the truth.

It has been clear from the cases presented to us that a certain procedural error was made with regard to some staff members, and despite Judgements in their favour, that the Administration has in a sense ignored them. Those cases were then submitted to the Committee, and now the people whose cases are presented are under the impression that we can do a great deal for them and restore their rights - or that perhaps we can make the Administration fulfil its commitments towards them.

We actually call for equality and justice in the decisions taken by the Administration. When it comes to appointments or promotions, and the like,

(Mr. Al-Suwaidi, United Arab Emirates)

equality should be the rule without discrimination. The principle should be proficiency, experience and qualifications.

We also call upon the Administration to keep its promise to the Committee to discuss and review the cases of Mr. Araim and Mr. Bentaleb as soon as possible.

We voted on the grounds that the Administration gave us a verbal commitment. And I stress that when we discussed these two cases for the first time we heard the Administration's verbal commitment - which was not a written but a moral commitment - to which it should adhere. We actually have not asked for a written commitment from the Administration because we in this great Organization commit overselves to keeping our promises, be they written or oral.

I have nothing else to add, and I hope that we shall very soon hear that the Administration has fulfilled its commitment.

The CHAIRMAN: I agree with the representative of the United Arab Emirates that we should do something to review, or make some suggestions on, the mandate and competence of our Committee. As I said at our last closed meeting this will be the subject of my consultations, and each member of the Committee will be duly informed at the appropriate time. What is important now is that delegations should start thinking about what the Committee needs to do. So, as I said, when the time comes I shall call on each member to make his contribution to enhance the competence, mandate and scope of the Committee.

Of course, it does not serve any useful purpose to come here and just say that we cannot do anything about the complaints of the personnel of the United

(The Chairman)

Nations Secretariat because our mandate is limited by Article 11. These are new times, times of change. Perhaps we should make our own contribution to reforming the United Nations system. Hence, while I respect members' sovereign right to speak on this matter, I would also appeal to them to bear in mind that this is a task we have to accomplish and let us make our own contribution at some appropriate time in the future.

Mr. MBURI (United Republic of Tanzania): I merely want to request that I be allowed to speak at the end, when we have gone through all the cases, because I intend to make a general statement but with Mr. Araim and Mr. Bentaleb as living examples.

The CHAIRMAN: As a matter of fact, I intended to make the proposal that those general statements regarding the scope and mandate of our Committee be made at the end of the consideration of all the applications before us. I will call on the representative of the United Republic of Tanzania at that time.

Let us proceed to the application of Mr. Al-Atraqchi. The Committee on Applications for Review of Administrative Tribunal Judgements considered the application of Mr. Al-Atraqchi submitted with regard to Judgement No. 538 rendered by the United Nations Administrative Tribunal in the case of Al-Atraqchi against the Secretary-General of the United Nations at its closed meeting held on 1 April 1992.

After members of the Committee had presented their views on the application of Mr. Al-Atraqchi, they were invited to decide whether or not there was a substantial basis for the application in respect of the grounds set forth in article 11 of the Statute of the United Nations Administrative Tribunal and referred to in the application. This ground is as follows:

Has the Tribunal failed to exercise jurisdiction vested in it?

The decision of the Committee with regard to this question was taken by vote.

In response to the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided by a vote of 17 to none, with

(The Chairman)

2 abstentions, that there was not a substantial basis for the application on that ground.

In view of the Committee's negative response to the question which had been put to it in the application of Mr. Al-Atraqchi, the Committee decided that there was not a substantial basis for the application under article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 538 delivered by the United Nations Administrative Tribunal in the case of Al-Atraqchi against the Secretary-General of the United Nations.

Does any member of the Committee wish to make a statement for the record?

Since that is not the case, we shall now proceed to the application of Mr. Ibarria. The Committee considered the application of Mr. Ibarria submitted with regard to Judgement No. 541 rendered by the United Nations Administrative Tribunal in the case of Ibarria against the Secretary-General of the United Nations at its closed meeting held on 1 April 1992.

After members of the Committee had presented their views on the application of Mr. Ibarria, they were invited to decide whether or not there was a substantial basis for the application in respect of the following three grounds set forth in Article 11 of the Statute of the United Nations Administrative Tribunal and referred to in the application:

1. Has the Tribunal failed to exercise jurisdiction vested in it?
2. Has the Tribunal erred on a question of law relating to the provisions of the Charter of the United Nations?
3. Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

(The Chairman)

The decisions of the Committee with regard to these three questions were taken by vote.

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided by a vote of 18 to none, with 2 abstentions, that there was not a substantial basis for the application on that ground.

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had erred on the question of law relating to the provisions of the Charter of the United Nations, the Committee decided by a a vote of 18 to none, with 2 abstentions, that there was not a substantial basis for the application on that ground.

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by a vote of 18 to none, with 2 abstentions, that there was not a substantial basis for the application on that ground.

In view of the Committee's negative response to the questions which had been put to it in the application of Mr. Ibarria, the Committee decided that there was not a substantial basis for the application under Article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 541 delivered by the United Nations Administrative Tribunal in the case of Ibarria against the Secretary-General of the United Nations.

(The Chairman)

We shall now consider the application of Ms. Fallah. The Committee considered the application of Ms. Fallah submitted with regard to Judgement No. 545 rendered by the United Nations Administrative Tribunal in the case of Fallah against the Secretary-General of the United Nations at its closed meeting held on 1 April 1992.

After members of the Committee had presented their views on the application of Ms. Fallah, they were invited to decide whether or not there was a substantial basis for the application in respect of the following two grounds set forth in Article 11 of the Statute of the United Nations Administrative Tribunal and referred to in the application:

1. Has the Tribunal failed to exercise jurisdiction vested in it?
2. Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

The decisions of the Committee with regard to these two questions were taken by vote.

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided by a vote of 19 to none, with 2 abstentions, that there was not a substantial basis for the application on that ground.

On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by a a vote of 19 to none, with 2 abstentions, that there was not a substantial basis for the application on that ground.

(The Chairman)

In view of the Committee's negative response to the questions that had been put to it in the application of Ms. Fallah, the Committee decided that there was not a substantial basis for the application under Article 11 of the Statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 545 delivered by the United Nations Administrative Tribunal in the case of Fallah against the Secretary-General of the United Nations.

Before calling on any member wishing to make a statement, I shall first proceed to "Other matters". At a closed meeting on 2 April 1992, under the agenda item "Other matters", the attention of the Committee was drawn to the information concerning the cases of Mr. Upadhya and Mr. Kioko contained in paragraphs 37 and 38 to 41, respectively, of the Information Circular prepared for the current session of the Committee (A/AC.86/INF.38). The Committee took note of that information.

Does any member of the Committee wish to make a statement now on the cases we have just considered, or on other matters?

Mr. MBURI (United Republic of Tanzania): Although you have stated, Mr. Chairman, that you would conduct consultations on the possible reform of the Committee, I should like to make a statement for the record.

The General Assembly was authorized in paragraph 2, Article 96, of the United Nations Charter, to request advisory opinions from the International Court of Justice on disputed Judgements by the United Nations Administrative Tribunal. It did so in various resolutions, including resolution 957 (X) of 1955. However, my delegation feels that we need to review the interpretation of those provisions of the resolution and of the United Nations Administrative

(Mr. Mburi, United Republic of Tanzania)

Tribunal rules relating to the establishment of the Committee, because the purpose for which the Committee was intended has perhaps ceased to exist. On the other hand, perhaps a thorough assessment of the Committee's achievements has not been seriously undertaken.

The Committee does not play any useful role in dispensing justice owing to the restrictive nature of the terms of reference in article 11 of the Statute of the Administrative Tribunal. We are afraid to say that we sit and deliberate on cases in which we know there has been a miscarriage of justice but that there is nothing we can do because we are confined to the four grounds stipulated in Article 11 of the Statute.

Since the establishment of the Committee very few cases have managed to reach the International Court of Justice in spite of the fact that a large number of them were genuine. Worse still, the Committee, which is not even a quasi-judicial committee, is to apply the four legal grounds and take judicial decisions. For example, during the consideration of the cases of Bentaleb and Araim, it was generally realized and observed that something was wrong with how their grievances were handled by the Administration, but the Committee's mandate had no means of dealing with them, as if it were a toothless dog. For example, while realizing and noting the injury suffered by Mr. Araim, the Tribunal still continued to support the argument of the Respondent, that is, the Administration.

The question is, should we now remain within our narrow mandate and feel relieved about our decisions? How long should we wait when we hear that the matter is before the General Assembly? We suggest that informal consultations among the members of the Committee should begin immediately - indeed, the Chairman has already stated as much - to see how the Committee can be reformed

(Mr. Mburi, United Republic of Tanzania)

on the basis of the proposals already submitted and on any other proposals that may be submitted. Indeed, we would be happy to see the Committee discontinued and a new committee or sub-committee established within the Sixth Committee, but with a much clearer and wider mandate than the present one. That is why we recommended a review of the relevant resolutions relating to the establishment of this Committee. Following those informal consultations, the matter should be considered seriously at the forty-seventh session of the General Assembly, and that could be done by a working group within the Sixth Committee. The Assembly should adopt a firm decision that would change the current status of the Committee.

Finally, during the closed meetings of the Committee, private as they were, my delegation requested that the additional information that was provided by the Secretariat regarding the question of Mr. Bentaleb and Mr. Araim be treated under Article 9 of the Committee's rules of procedure; and, of course, we expect that the same opportunity will be afforded to all parties to the proceedings of the Administrative Tribunal.

Although the Committee is not mandated to do so, my delegation would have preferred that, based on the information provided by the Secretariat, Mr. Araim in particular would be given full and fair consideration for a D-1 post as soon as possible.

On another issue, the Committee should also ask itself if it is proper for the United Nations Legal Counsel to be present at the private deliberations of the Committee and whether that practice is not contrary to paragraph 3 of Article 8 of the Committee's rules of procedure.

Mr. DELON (France)(interpretation from French): Mr. Chairman, I should like to make a few remarks following the statement you made a short time ago to comment on the conclusions reached during a private exchange of views within the framework of the Committee's work.

You stated that you intended to conduct consultations on the manner in which the Committee functions and on how it might function better. My delegation welcomes that intention and will participate in those consultations.

During the general debate and in the course of the presentation of various cases we have considered, we have heard here a number of remarks aimed at a number of different elements. The Committee's role is clearly defined by the statute of the United Nations Administrative Tribunal, a statute that was adopted by the General Assembly of the United Nations. That statute is nothing new; it has been in effect for years. Thus, it is difficult to say that the Committee has ceased to have any powers. Its powers are the same as they ever were and have not been reduced.

(Mr. Delon, France)

But it is also true that the mandate of the Committee is strictly defined by texts, in particular by Article 11 of the Statute of the Administrative Tribunal. This Committee is not an appeal body of the United Nations Administrative Tribunal. It is an ad hoc organ entrusted with determining whether a Judgement of the Administrative Tribunal should, for legal reasons - and I emphasize, for legal reasons, and not de facto reasons - be brought to the International Court of Justice for an opinion, knowing that the Court itself would not judge the case again but that it would say whether the case should be reconsidered.

That is how things work. We are, in a sense, a filtering body on the way to what the International Court of Justice might do. We are not at all mandated by the General Assembly to try once again cases that have already been brought to the Administrative Tribunal nor to be the critics of the Administration. That is not the mandate given us by the General Assembly, and there is nothing we can do about it. This is the framework within which the Committee's task is to be carried out. And that is the reason why, in all the cases that have been put to us, my delegtion has considered that none of the legal means available on which the Committee could base itself to submit cases to the International Court of Justice were well-founded. We believe quite clearly and unhesitatingly that in no case did any of these legal means exist.

So where does this uneasiness we sensed in some of the statements made here come from? When we consider the legal means available to us, we also consider the cases in their entirety. We read the Judgements, we read the applications and we read the defence prepared by the Administration; and through the cases put to us, even though there may have been no legal ground justifying presentation to the International Court of Justice, we see that there are problems, not with respect to the Tribunal, but with respect

(Mr. Delon, France)

to the Administration. It is as members of delegations to the United Nations - and not as judges - that we react. That is how I interpret the statements that I have heard today. I must add that, speaking personally and not as a member of this Committee, I agree with many of the comments that have been made about the malfunctioning of the Administration. Two of the cases put to us today make it clear that in certain cases the Secretariat has lost sight of the basic ground rules that should determine recruitment and promotion within the United Nations Administration. These cases have been brought to the Tribunal. The Tribunal has also noted what I have just said and decided against the Administration and awarded indemnities to the parties concerned - a rather significant indemnity in one case - at the same time, expressing certain wishes. The Tribunal cannot do more than that; it cannot hand down injunctions to the Administration because it cannot act in lieu of the Administration. The Tribunal is not a judge that can see to the administration of the United Nations instead of the people entrusted with that role. Therefore, the Tribunal has rightly exercised its jurisdiction. It did what it could do. It could not do more.

But these cases show us that there are problems, and sometimes serious problems, in the Administration. I think that it is in this sense that we should appreciate what has been said today. In any event, this is the message that we, as the French delegation, would like to see brought to the attention of the Secretariat. All of us here hope that the rules will be respected, that the principle of equality will be respected and that the provisions of the Charter will be respected with regard to staff recruitment and promotion.

The CHAIRMAN: I thank the representative of France for his eloquent statement. I am sure that it will be of help to the Chairman when conducting consultations on our work in the Committee.

Mr. WOOD (United Kingdom): I shall be very brief because I agree with what the representative of France has just said.

I think it is clear that this Committee cannot go beyond its specific functions set forth in Article 11 of the Statute of the Administrative Tribunal. It follows from that that it is not for this Committee or for the members of this Committee as such to attempt to deal with events subsequent to the delivery of the Judgement. It also follows that it is not for this Committee as such to consider the reform or abolition of this Committee.

Having said that, I think it is a welcome development for the States represented here that have recent experience in this Committee to wish to discuss informally among themselves whether the Committee serves a useful function and what changes, including perhaps the abolition of the Committee, should be considered. Therefore, I welcome the Chairman's statement that he will - I think not so much as Chairman but as the representative of a State that has been closely connected with the Committee - talk to other interested delegations in the near future about this matter. I think there will be informal consultations that may or may not lead to a proposal in the appropriate forum, which is, of course, the appropriate Committee of the General Assembly.

So long as this Committee continues to exist, it is the duty of its members to fulfil in a proper manner the functions conferred upon it by Article 11 of the Statute. These functions have been examined carefully by the International Court in the three cases which it has considered. It has described these functions as quasi-judicial and, in my view, that is the

(Mr. Wood, United Kingdom)

appropriate approach for members of this Committee when addressing applications. They should not allow extraneous considerations to bear on their decision.

Finally, a very small point: mention was just made of Article IX of the rules of procedure, as, indeed, mention was made of it during our deliberations. I would like to make it clear that, in fact, the Committee did not decide to apply article IX to a particular case.

The CHAIRMAN: I thank the representative of the United Kingdom for his statement. I want to thank him for his support of the idea of conducting informal consultations on the work of the Committee. But let me stress that I intend to do so as Chairman and not as a representative of Mozambique. Of course, I can also conduct consultations on whether I should conduct those consultations on that basis or not; so he may accept or reject my idea.

Ms. WILLSON (United States of America): I want to react to the many interventions we have heard today, which may have created a false impression. The desire has certainly been expressed to do more in these cases, but, as the representative of the United Arab Emirates correctly pointed out, the fact is that the Committee has a very specific mandate. The Committee's very title indicates that it is a review committee, not a court of appeal.

Naturally, as individuals we are sympathetic with the difficulties of the applicants when we review these cases. Nevertheless, it is my delegation's view that in considering the cases that it has just finished reviewing the Committee has completely fulfilled its responsibilities. I think that is important in terms of the overview of this session, which has just been completed. I should like to underscore that.

Mr. SANDOVAL (Ecuador) (interpretation from Spanish): At this, the only public, meeting of the Committee's thirty-ninth session, we should like to state our opinions regarding the Committee's composition and the legal framework within which it functions.

We believe there are serious impediments to the satisfactory administration of justice in the cases before us. First, I wish to refer to the Committee's composition and the duration of its members' mandate. Under resolution 957 (X) of 1955, which created the Committee, the Committee is to be made up of the 29 members of the General Committee. As we all know, the General Committee has very clear mandates regarding its administrative work in assisting the presidency of the General Assembly in the organization and smooth functioning of the Assembly and its Main Committees.

The first question that arises, then, is whether the present composition of the General Committee, identical to that of this Committee, enables it to

(Mr. Sandoval, Ecuador)

deal with and pass judgement on cases with implications that are clearly legal and, more than that, I would say judicial.

The representative of the United Kingdom referred to the fact that the International Court of Justice has recognized the quasi-judicial functions performed by this Committee, which, paradoxically, because of its origin, is an eminently political body.

Moreover, since 24 of the 29 members of the Committee are replaced each year, my delegation wonders whether it is appropriate to talk about continuity in patterns of conduct regarding cases before us. Could it not be claimed that this instability in the Committee's membership makes it possible to set precedents or to establish jurisprudence? Is it fair to say that if there has been any precedent it has been that the Committee has invariably rejected applications for advisory opinions of the International Court of Justice? Take the seven cases we have considered at this session. Of the 76 applications to the Committee, the request has been denied in 73 cases. The three dealt with by the Court are the exception to the rule.

Another matter that disturbs my delegation is the lack of a permanent policy regarding the records of the Committee's public meetings. The decisions adopted should appear in records where they also reflect the reasons and arguments giving rise to the decisions. The records should be sent officially to the parties, whatever decision the Committee adopts.

Secondly, I should like to refer to the Committee's mandate and the legal framework within which the Committee functions. In the course of the present session and today, at this public meeting, in dealing with the various cases a number of members of the Committee have recognized that the mandate established in Article 11 of the Statute of the Administrative Tribunal is

(Mr. Sandoval, Ecuador)

narrow and limited. I would even venture to suggest that this mandate is perhaps too narrow and too limited. As a point of departure, we have more than a mandate - something that could well be called a kind of gag.

The concerns expressed here are not new. Other delegations in past years have conveyed these feelings in similar terms. Regrettably, the results achieved in the last process of change, which, I understand, ended in 1991, made possible only modest, limited reforms regarding some procedural norms and did not bring about any change in the process or the way in which it is conceived today. The relative success of this initiative in restructuring and change should not prompt us to feel that this process has come to an end. On the contrary, it should encourage us perhaps to work in a context different from that of the Fifth Committee.

My delegation would like to send a clear, unequivocal message of hope that in the future all necessary measures will be taken to ensure that the Committee functions truly as a higher appeals body based on fair rules guaranteeing that the parties are equal in the process and allowing it in the end to administer justice. We must serve justice and not the law.

It is time we seriously considered the need to restructure restructure the Committee. Perhaps it could be more effective if it were made up of a select group of jurists appointed for this purpose and working within a satisfactory legal framework, satisfactory to Member States of the United Nations, the Administration and employees and officials of the Organization.

I welcome your announcement, Mr. Chairman, about the holding of consultations to discuss the Committee's mandate and other relevant matters.

For all the reasons I have given, after very careful thought my delegation called for a vote on each of the seven cases before the Committee and abstained in each.

Mr. NEUHAUS (Australia): At this stage let me thank you, Sir, for the way in which you have chaired our deliberations.

I had not intended to speak, but I feel it would be wrong if my delegation did not make it clear that we associate ourselves with the general expression of concern with regard to the Committee and the need for consultations on the way to reform the whole process.

Australia is on the Committee only as a member of the General Committee, and this is not a committee in which we have all that much involvement, as we only serve from time to time. However, Australia has taken a profile in administrative reform at the United Nations, and we believe that this is another area ripe for reform.

We support your consultations, Mr. Chairman, and look forward to consulting widely on this subject. We believe that we should draw on the experience of other international organizations that will be familiar to many of us and that more adequately provide for administrative review without a committee of this nature and without the need to consider referring their matters to a very busy International Court of Justice.

(Mr. Neuhaus, Australia)

We agree that this consultation should end in consideration by the appropriate Committee at the forty-seventh session of the General Assembly.

Mr. HAYES (Ireland): Like the representative of Australia, I had not intended to speak - until I began to be concerned that my silence might be misinterpreted.

First, the terms of reference of this Committee are set out in article 11 of the Statute of the Administrative Tribunal. In our closed meetings, I have already described it as a very narrow mandate, with very technical grounds that are very precisely drafted. It is a very tight mandate on the deliberations and the conclusions of the Committee. I think that the Committee quite correctly stayed within the terms of this mandate in the cases before us. Indeed, it is our duty as members of the Committee to seek to do that.

I should also say that, in order to stay within that mandate, the Committee - as other representatives have said - must act in a quasi-judicial way in interpreting the grounds.

From this I draw a few conclusions.

First, a committee with these narrow terms of reference and this quasi-judicial function should not, to my mind, be selected in the way it is selected. It is now selected as coinciding with the membership - for the time being - of the General Committee of the General Assembly. That is a group that is not chosen for its capacity to exercise quasi-judicial functions: it is a very political body. I would not wish to exaggerate by saying that the same persons necessarily sit on the two Committees, but that method of choice is certainly not one that ensures that this Committee takes a quasi-judicial

(Mr. Hayes, Ireland)

approach. I think we should congratulate ourselves that the Committee has in fact taken that approach in this instance and, so far as I know, in other instances as well.

My second conclusion is that, granted these very narrow, technical grounds, it does not seem to me that this Committee - which spends quite a lot of time on these cases, both in the work in the Committee itself and in the preparations for that work - serves any very useful purpose. One need only look at the statistics that have just been quoted by the representative of Ecuador to see that in fact nothing very fruitful comes out of this Committee in the way of substantive reviews leading to changes of decisions.

From those two intermediate conclusions, I have come to the conclusion that reform is needed in this area. I have no rigid ideas about what form this reform should take, but it seems to me that two things should necessarily happen.

First, a different mandate should be given to whatever body is reviewing the decisions of the Administrative Tribunal - not the narrow, technical mandate we now have. I have not made up my mind exactly what the mandate should be, but it should surely be directed towards ensuring that there is an effective administration of justice in this area.

Secondly, whatever body is given this particular mandate or this particular function - and I nod in the direction of my Australian colleague, who has pointed out to us that there are many ways of doing this - it should be a body chosen to exercise the kind of judicial or quasi-judicial function that this mandate would require.

For those reasons, I welcome your announcement, Mr. Chairman, that you are going to engage in informal consultations. Quite a number of

(Mr. Hayes, Ireland)

representatives have expressed concern, both in this open meeting and in the closed meetings - I hope I am not breaking any rules of confidence when I refer also to the closed meetings. I hope that this general expression of concern will translate itself in due course into a willingness to try to carry forward the reform we think is needed in this area.

The CHAIRMAN: I thank the representative of Ireland for that very useful contribution to our future work as we try to review the Committee's mandate.

According to our title, this is a Committee to review Administrative Tribunal judgements. In other words, we are supposed to do some reviewing. But the scope of our mandate is limited under article 11 of the Tribunal's Statute. So there is not much we can do. Even if we have before us a case of injustice or wrongdoing, our mandate is limited.

It is very good that many delegations will be prepared to make their contributions in the consultation which is to be carried out in the coming days.

Mr. MBURI (United Republic of Tanzania): I wish merely to seek some clarification.

During the closed meetings, and even here today, my delegation said that the information given by the secretariat should be treated as additional information under article IX of the Committee's rules of procedure. One representative has said that that was not agreed. However, when I spoke about this during the closed meetings of the Committee, no objection was raised to what I had suggested. In fact, I believed that the suggestion would be put into practice. I thought that already such additional information was being treated under article IX of our rules of procedure. Today I hear that we did not agree on that.

(Mr. Mburi, United Republic of Tanzania)

Hence, I am seeking to ascertain whether that really is the case. If we do not treat this under article IX, I do not know how we are going to proceed in regard to the comments made by various representatives here on the way in which the cases of Mr. Araim and Mr. Bentaleb should be dealt with.

The CHAIRMAN: I thank the representative of the United Republic of Tanzania for opening up a new issue for debate at what I consider to be a late hour!

I think I must seek some guidance from the Committee in this regard. I do not know whether, after we have taken our decisions, we should go back to the question of article IX. It was unfortunate that I did not make a ruling the other day. It would perhaps have been better if we had decided. But at this point in time it is difficult for me to decide, and also I doubt whether it is relevant to these cases.

(The Chairman)

So if the representative of Tanzania - who is a very good friend of mine, my brother and a good lawyer, I recognize - does not insist, I will understand that delegations will not ask to speak again on this question.

I now call on the Secretary of the Committee.

Mr. GOLITSYN (Secretary of the Committee): In connection with the case of Mr. Bentaleb, in some statements reference was made to commitments or promises on the part of the Administration. In this regard, I think the situation should be clarified.

As Secretary of the Committee I was asked to obtain information about the implementation of one of the paragraphs of the Administrative Tribunal's judgement. I informed the Committee that within the limited time period available I could only contact some of the members of the Administration at middle level and obtain factual information, and when the references were made to the term "commitment", at that time I explained that the information which I provided was factual information and was not a formal reply and did not have the character of a commitment.

The CHAIRMAN: Since there are no other speakers, the meeting is adjourned.

The meeting rose at 4.55 p.m.